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IN THE HIGH COURT OF JUDICATURE AT JABALPUR

Division Bench (Criminal)

CRIMINAL APPEAL NO. 1446/2000.

APPELLANT
(in jail)

Janikram Kewat
S/o Ransai Kewat
aged about 32 years.
R/o Village-Singhul,
Police Station-Shivrinarayan,
Distt. Janjgir (MP).

//Versus//

RESPONDENT

State of Madhya Pradesh,
Through-police station -
Kasdol Distt. Raipur (MP).

CONVICTION

Under Section-302
of Indian Penal Code.

SENTENCE

Rigorous imprisonment
for life and fine of
Rs.1000/-. In default
of payment of amount of
amount of fine 6 months
simple imprisonment.

APPEAL UNDER SECTION 374(2) OF CRIMINAL
PROCEDURE CODE, 1973

मामला क्रमांक C.R.A. 1446.... सन् 2000

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>DIVISION BENCH:-</u> <u>Hon. Shri L.C. Bhadoo &</u> <u>Hon. Shri Dharendra Mishra, JJ</u>	
	<u>CRIMINAL APPEAL No. 1446/2000.</u> <u>APPELLANT</u> : Jankiram Kewat <u>VERSUS</u> <u>RESPONDENT</u> : State of M.P. (now C.G.) Shri V.A. Goverdhan, Counsel for the appellant. Shri Ashish Shukla, Additional Public Prosecutor for the respondent/State.	
	<u>(ORAL JUDGMENT DICTATED ON DAIS)</u> <u>{Dated 01.3.2007}</u> <u>L.C. Bhadoo. J</u> The accused/appellant has preferred this appeal against the impugned judgment dated 31.3.2000 passed by the Additional Sessions Judge, Baloda Bazar in Sessions Trial No. 297/1999 by which he has been held guilty for commission of the offence under Section 302 of the Indian Penal code and sentenced to undergo imprisonment for life and pay fine of Rs. 1000/- in default of payment of fine to further undergo simple imprisonment for six months.	

P.T.O.

मामला क्रमांक सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Rs. 1000/- in default of payment of fine to further undergo simple imprisonment for six months. 2. Case of the prosecution, as mentioned in the FIR Ex. P-1 lodged by one Chhedilal Nisad in police Station Kasdol, is that on 20.4.1999 accused/appellant along with his children left for village Tannod. About half an hour thereafter two children of the accused came back weeping and informed that their father has attacked their mother with a stick, on which complainant Chhedilal went there and saw that Jamunabai was lying on the bank of the river and accused was also sitting there. On inquiry by him, accused confessed that he has committed murder of his wife. Receiving this report from Chhedilal, Station House Officer of Police Station Kasdol registered the FIR, left for the scene of occurrence and after giving notice to the witnesses he conducted inquest on the dead body of Jamunabai and prepared inquest report Ex. P-3. One Babul club was taken into possession from the accused under Ex. P-4. Plain soil as well as blood stained soil, broken pieces of glass bangles of the deceased and pair of chappals were taken into possession under Ex. P-5. Site plan Ex. P-6 was prepared. Clothes of the accused were taken into possession under Ex. P-7 whereas the clothes of the deceased were taken into possession in a sealed packet under Ex. P-10. Thereafter, dead body of Jamunabai was sent for post mortem examination to the Primary Health Centre, Kasdol, where Dr. K.K. Thawait (PW-7) conducted the post mortem examination and submitted his report Ex. P-11 in which he opined that cause of death is head injury and the death was homicidal in nature. After completion of the investigation charge sheet was filed against the accused in the Court of Additional Chief Judicial	

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	Magistrate who in turn committed the case to the Court of Sessions Judge, Raipur from where the Additional Sessions Judge, Baloda Bazar, received the case on transfer for trial. 3. Prosecution in order to establish the charge against the accused/appellant has examined as many as eight witnesses. Statement of the accused was also recorded under Section 313 of the Code of Criminal procedure in which he denied the material appearing against him in the prosecution case and pleaded his innocence and false implication in the case merely on the saying of his daughter. 4. After hearing counsel for the parties the Additional Sessions judge, Baloda Bazar convicted and sentenced the accused/appellant as mentioned above. 5. We have heard counsel for both the parties and perused the record of the trial Court including the impugned judgment. 6. Counsel appearing for the appellant has not disputed the homicidal death of Jamunabai. Moreover, Dr. K.K. Thawait (PW-7) who conducted the post mortem examination on the body of Jamunabai has stated that there was injury on her head on the right side of occipital region, blood was oozing out of the nose and mouth, skull bone was fractured, injuries were fatal to life and they were ante mortem in nature. Thus, it is established that the death of Jamunabai was homicidal in nature. 7. As far as the involvement of the accused in the crime in question is concerned, in this case almost every witness has turned hostile. PW-1	

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		Chhedilal has not supported the FIR (Ex. P-1) lodged by him. He has stated that on 20.4.1999 at about 5.30 p.m. he was at his house and was busy in the marriage ceremony. He was informed by the villagers that some quarrel took place on the bank of the river but they did not disclose the names of the persons between whom it took place. He went to the river bank and saw that wife of Jankiram was lying there and thereafter he went to the police Station to lodge the report. At that time, he did not see injury on her body but when he came back along with the police people he saw the injury on her head, blood was oozing out of the injury and by then Jamunabai was already dead. Police people took Jankiram to the Police Station where on inquiry by the police accused told that he has committed the murder of his wife. Jankiram further said that in fact he does not know whether he has murdered his wife or not. Makhan Singh PW-2 has also stated that in the evening at about 5.30 p.m. when he was sleeping in his house, Dashrath and Rajaram came to his house and informed that scuffle took place, let us go and see. Thereupon, he along with Sarpanch went across the river and saw some woman was lying there. He did not go near the body nor did he see any injury on it. Her head was covered with cloth. PW-3 Sunita is the daughter of the accused. In her examination in chief, she has stated that along with her father and mother she went to Malda and while returning what happened, she does know. She was declared hostile. On cross examination by the AGP she stated that her father attacked her mother with lathi on head. However, on cross examination by the counsel for the accused she stated that she did not see her father assaulting her mother. Therefore, the evidence of this witness is of no help to the prosecution. PW-4 Rajaram has stated in his evidence that the accused is his elder brother-in-law. A day prior to the date of incident

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	Accused had visited his house and after staying for one night, he left therefrom along with his wife and children. On the same evening younger daughter of the accused came and informed that her mother has been murdered but she did not disclose as to who murdered hr mother. Thereafter, he along with Sarpanch Chhedilal and doctor went there and saw that dead body of Jamunabai was lying and accused was present there. When this witness asked the accused as to why he has done so, he replied that when he had gone to the riverside after making his wife and children to sit, somebody killed his wife. Accused had not told that he himself murdered Jamunabai. This witness has also turned hostile and not supported the case of the prosecution. On cross examination this witness has deposed that he did nto state anything in the police statement Ex. P-9 to the effect that Jamuna bai was writhing and the accused was standing near her carrying club. On inquiry, he said that he has assaulted Jamunabai with club. There is no other evidence to establish that the accused assaulted Jamunabai. 8. The only circumstance against the accused is that he himself, the deceased and their children left together and thereafter in the evening Jamunabai was found dead on the bank of river. As per the evidence of PW-4 Rajaram – brother in law of the accused in which he has stated that when they reached, on inquiry the accused disclosed that when his wife and children were sitting, he went to the riverside and at that time, somebody has committed the murder of his wife. He did not say that he himself has committed the murder of Jamunabai. Apart from that, there is no other evidence to connect the accused with the crime as all the witnesses have turned hostile. Whether accused and the deceased were having any strained	

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	relations or otherwise or there was any other reason for the accused to murder his wife has not been brought on record. Even last seen together is also a very weak type of evidence and one cannot be held guilty solely on this ground unless and until something more is brought on record to indicate the involvement of the accused in the crime. Therefore, prosecution has utterly failed to establish the charge against the accused. Therefore, conviction of accused under section 302 of the IPC cannot be sustained. 9. In the result, the appeal is allowed. Impugned judgment of the trial Court convicting the accused/appellant under section 302 of the IPC and resultantly sentencing him to undergo imprisonment for life and pay fine of Rs. 1000/- with default stipulation, is set aside. Accused stands acquitted of all the charges leveled against him. It is stated that the appellant is in custody since the yea 1999. He be set at liberty forthwith, if not required in any other case.	
	Sd/- L.C.BHADOO Judge	Sd/- DHIRENDRA MISHRA Judge

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